

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

LYDIA KLOTZ,

Plaintiff,

v.

CARMAX,

Defendants.

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Case No. '03 C 2262

The Honorable Joan B. Gottschall

RECORDED

JUL 11 2003

FILED  
JUN 26 2003  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

NOTICE OF MOTION

TO: Lydia Klotz, Plaintiff Pro Se  
3320 Odessey Ct.  
Naperville, IL 60563

PLEASE TAKE NOTICE that on July 2, 2003, at 9:30 a.m., the undersigned will appear before the Honorable Joan B. Gottschall in Courtroom 1919 of the Dirksen Federal Building located at 219 S. Dearborn, Chicago, Illinois, and then and there present the attached Motion to Compel Arbitration and Stay This Proceeding Pending Arbitration, a copy of which is herewith served upon you, along with Defendant's Memorandum in support of said Motion.

INTERNATIONAL PAPER COMPANY

By:

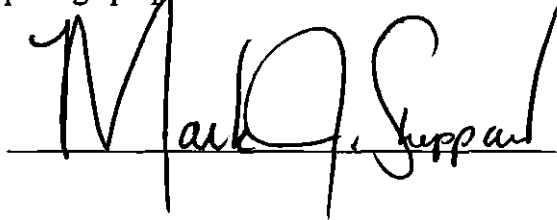
One of its attorneys

John J. Michels, Jr., Esq.  
Mark J. Sheppard, Esq.  
McGuireWoods LLP  
77 W. Wacker, Ste. 4400  
Chicago, IL 60601  
Counsel for Defendant, CarMax, Inc.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that (s)he served the foregoing Notice and attached Motion to Compel Arbitration and Stay this Proceeding Pending Arbitration, along with Defendant's memorandum in support thereof, by placing a true copy of same in a properly addressed envelope and depositing it in the U.S. mail chute located at 77 W. Wacker Drive, Chicago, Illinois, with proper postage prepaid, at or before 5:00 p.m. on June 26, 2003, with proper postage prepaid.

  
Mark J. Suppau

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLIONIS  
EASTERN DIVISION

LYDIA KLOTZ,

Plaintiff,

v.

CARMAX,

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Case No. 03 C 2262

DOCKETED  
JUL 11 2003  
FILED  
JUN 26 2003  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

**DEFENDANT'S MOTION TO COMPEL ARBITRATION  
AND STAY COURT PROCEEDINGS**

Defendant CarMax, Inc. ("CarMax"), by its counsel, McGuireWoods LLP, hereby moves to compel arbitration of the claims brought by Plaintiff Lydia Klotz, *pro se*, ("Klotz") and to stay proceedings pending arbitration, and states as follows:

1. On April 2, 2003, Klotz filed a Complaint in the District Court for the Northern District of Illinois, Case No. 03-C-2262.
2. Klotz had applied for employment at CarMax on January 25, 2002. Her CarMax employment application contained an arbitration clause requiring that all disputes between herself and CarMax arising out of her application, employment or termination, would be subject to mandatory arbitration. This included employment discrimination claims including those that had been submitted to an agency for determination.
3. CarMax discharged Klotz from employment and she subsequently filed a charge alleging age, national origin and disability discrimination with the Equal Employment Opportunity Commission ("EEOC"). The EEOC dismissed the charge and

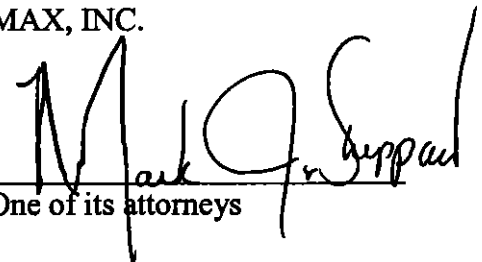
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issued her a right-to-sue letter. She then filed the Complaint in this matter alleging the same discrimination charges.

4. The mandatory and binding arbitration agreement governs resolution of all disputes between Klotz and CarMax. That agreement is valid and enforceable, binding on the parties, and governs Klotz's claims in this case.

WHEREFORE, for the reasons stated above and in CarMax's accompanying Memorandum in Support, this Court should compel arbitration of Klotz's claims against CarMax and stay these proceedings pending the outcome of that arbitration.

CARMAX, INC.

By:   
One of its attorneys

John J. Michels, Jr., Esq.  
Mark J. Sheppard, Esq.  
McGuireWoods LLP  
77 W. Wacker Dr. Suite 4400  
Chicago, IL 60601  
Counsel for Defendant, CarMax, Inc.

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LYDIA KLOTZ,

**Plaintiff,**

**V.**

CARMAX,

### Defendants.

**Case No. 03 C 2262**  
**Judge Gottschall**

FILED

JUN 26 2003

**MICHAEL W. DOBBINS**  
**CLERK, U.S. DISTRICT COURT**

**DEFENDANT'S MEMORANDUM IN SUPPORT**  
**OF ITS MOTION TO COMPEL ARBITRATION AND STAY THIS**  
**PROCEEDING PENDING ARBITRATION**

# DOCUMENT

JUL 11 2003

## I. INTRODUCTION

**COMES NOW** the Defendant Carmax, Inc. (“CarMax”), by its counsel, McGuire Woods LLP, and files its Memorandum in Support of its Motion to Compel Arbitration and Stay This Proceeding Pending Arbitration.

Lydia Klotz (“Klotz”) brought a *pro se* Complaint against CarMax alleging age, disability and national origin discrimination. In applying for employment at CarMax, Klotz signed an agreement to arbitrate any employment-related disputes. Klotz's claims in this matter fall squarely within the area governed by the arbitration agreement. To date, Klotz has not filed a demand for arbitration, nor has she raised any of her claims in an arbitration forum.

The Federal Arbitration Act and its interpreting case law dictate that this Court should enforce Carmax's arbitration agreement and that the Court should stay this proceeding and compel the parties to arbitrate this dispute. As set forth in more detail

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below, CarMax urges this Court to grant Carmax's Motion to Compel and stay this matter pending arbitration.

## II. FACTUAL BACKGROUND

Klotz applied for the position of Sales Consultant Trainee at CarMax on January 25, 2002. Her application is attached as Exhibit A. The application includes a Dispute Resolution Agreement ("the Agreement"), which specifically states that applicants who "wish to be considered for employment [must] read and sign [the Agreement]. You will be considered as an applicant when you have signed the Agreement. Included in this application is the CarMax Dispute Resolution Process and Procedures." (Exh. A at 2).

Applicants are given three days to withdraw their consent to the Agreement and end the application process. (Exh. A at 2). The Agreement, in pertinent part, states as follows:

Except as set forth below, **both CarMax and I agree** to settle any and all previously unasserted claims, disputes, or controversies arising out or relating to my application or candidacy for employment, employment and/or cessation of employment with CarMax, exclusively by final and binding arbitration before a neutral arbitrator. By way of example only, **such claims include claims under federal, state and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Medical Leave Act, the law of contract or tort.**

I understand that if I do file a lawsuit regarding a dispute arising out of or relating to my application or candidacy for employment, employment or cessation of employment, CarMax may use this Agreement in support of its request to the court to dismiss the lawsuit and require me instead to use arbitration....

I further understand that I may still file administrative charges with the Equal Employment Opportunity Commission or similar federal, state or local agency, but that upon receipt of a right-to-sue letter or similar

administrative determination, I shall arbitrate any claim that I may have against CarMax.

(Exh. A at 2) (emphasis added) The Agreement also states that:

I recognize that if I sign the Agreement and do not withdraw within three days of signing I will be required to arbitrate, as explained above, employment-related claims which I may have against CarMax, whether or not I become employed by CarMax.

(Exh. A).

Klotz signed the Agreement when she applied for employment at CarMax.

CarMax hired Klotz for the Sales Consultant Trainee position on February 28, 2002.

CarMax terminated her employment on April 24, 2002, for unsatisfactory performance.

After filing a charge of discrimination, and receiving a Notice of Right to Sue from the Equal Employment Opportunity Commission, she brought this action. Klotz did not file an arbitration demand, and arbitration between Klotz and CarMax over the claims in her Complaint has not occurred.

### **III. ARGUMENT**

This Court should stay this litigation as required by the Federal Arbitration Act, 9 U.S.C.A. § 2, *et seq.* and compel Klotz to arbitrate her claims against CarMax, because: (1) the parties entered into a valid and binding arbitration agreement; (2) each of Klotz's claims falls squarely within the scope of the arbitration provision contained in the Agreement; and (3) no waiver of the Agreement occurred.

#### **A. Standard of Review.**

In considering a motion to compel arbitration, the Court applies the standards found in the Federal Arbitration Act, 9 U.S.C.A. § 2, *et seq.* (West Stat. 2003), which provides that an arbitration clause in a 'contract evidencing a transaction involving

commerce ...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” *Double Sunrise, Inc. v. Morrison Management Specialist, Inc.*, 149 F.Supp.2d 1039, 1043 (N.D. Ill. 2001)(quoting the FAA, 9 U.S.C. § 2).

The Federal Arbitration Act (“FAA”) reflects a legislative recognition of “the desirability of arbitration as an alternative to the complications of litigation.” *Wilko v. Swan*, 346 U.S. 427, 431 (1953). *See also Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (9 U.S.C. § 2 is “a congressional declaration of a liberal federal policy favoring arbitration agreements”).

The Act further provides that proceedings in federal court must be stayed whenever the court finds that a claim before it is subject to arbitration:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3 (emphasis added); *Matthews v. Rollins Hudig Hall Co.*, 72 F.3d 50, 53 (7<sup>th</sup> Cir. 1995).

These statutory provisions are mandatory and binding on federal courts: “By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).



The policy behind the FAA warrants that federal courts interpret arbitration clauses broadly to include all claims that could reasonably be included within their scope. In *Double Sunrise*, this Court acknowledged this mandatory rule of construing arbitration agreements:

Once it is clear that the parties have a contract that provides for arbitration of the contested issues between them, the arbitration provisions must be given their broadest possible meaning.

*Double Sunrise*, 149 F.Supp.2d at 1043.

Thus, even if the agreement at issue is ambiguous with regard to whether a claim is subject to arbitration, the trial court should construe the agreement as covering the claim. The Supreme Court has held that under the FAA, “as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” *Moses H. Cone Mem. Hosp.*, 460 U.S. at 24-25; accord, *Matthews*, 72 F.3d at 53. “In interpreting the construction of the contract language, ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.’” *Id.* (citing *Moses H. Cone Mem. Hosp.*, 460 U.S. at 24). A court may not deny a party’s request to arbitrate an issue “unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” *Matthews*, 72 F.3d at 53. “Doubts should be resolved in favor of coverage.” *Id.*

#### **B. Klotz’s Claims Are Clearly Arbitrable**

This Court stated that, “In order to determine whether a claim is arbitrable, we must determine: 1) whether there is an agreement to arbitrate; 2) whether the claims fall within the scope of that agreement; and 3) whether there has been a waiver of the right to

arbitrate." *Nieminski v. John Nuveen & Co.*, No. 96-C-1960, 1997 WL 43241 at \* 2 (N.D. Ill. Jan. 23, 1997)(quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991)). Because CarMax and Klotz entered into an arbitration agreement and there is no waiver, the Court should grant CarMax's motion.

**1. Klotz and CarMax Are Parties to a Valid Agreement to Arbitrate this Dispute.**

There can be no doubt in this case that CarMax and Klotz entered into a valid and enforceable agreement to submit all disputes between them to arbitration. The application signed by Klotz contained the signed Agreement in which Klotz expressly agreed that she would "arbitrate all claims" against CarMax. (Exh. A at 2).

In determining whether an arbitration agreement in an Illinois contract is valid, courts examine the agreement under Illinois contract law as they would any other contract. *Koveleskie v. SBC Capital Markets, Inc.*, 167 F.3d 361, 366-67 (7<sup>th</sup> Cir. 1999). Courts consider the agreement at issue to be supported by adequate consideration so long as its provisions bind both parties. *Id.* at 367-68. That one party may have had unequal bargaining power is not a basis for invalidating an Illinois arbitration agreement. *Id.* at 367. Nor is conditioning the worker's employment on his or her signing the arbitration agreement a basis for refusing to enforce an agreement. *Id.*

In the current case, the Agreement is clearly valid under Illinois law. Consideration clearly supports the Agreement since mutual promises to arbitrate bind both parties. That the Agreement is in an employment application and not an employment contract has no bearing on its validity. *See Gilmer*, 500 U.S. at 25 (arbitration agreement in separate pre-employment application binding on employment disputes as any other arbitration clause). Klotz does not even acknowledge the

Agreement in her Complaint, much less criticize it for being invalid on any basis. The Agreement is thus valid and enforceable.

**2. Klotz's Claims against CarMax Are Subject to Arbitration**

Every cause of action set forth in Klotz's Complaint falls within the scope of the arbitration clauses to which she agreed. The Agreement's arbitration clause is extremely broad and expressly reaches Klotz's age, disability, and national origin discrimination claims:

[S]uch claims include claims under federal, state and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Medical Leave Act ....

(Exhibit A at 2).

The Supreme Court and Seventh Circuit have definitively held that arbitration agreements reach employment discrimination claims. *Gilmer*, 500 U.S. at 35; *Tinder v. Pinkerton Security, Inc.*, 305 F.3d 728, 734 (7<sup>th</sup> Cir. 2003). Even if the Agreement was ambiguous regarding whether Klotz's claims were arbitrable, the Court is compelled by statute to resolve any ambiguities in favor of arbitration. *See Matthews*, 72 F.3d at 53. Since the Agreement's broad arbitration clause clearly covers Klotz's claims in this case and it cannot be said with "positive assurance" that the Agreement is not susceptible to an interpretation that covers Klotz's claims against CarMax, the Court should compel arbitration. *Id.*

**3. No Waiver of the Arbitration Agreement Occurred**

Finally, there is no alleged CarMax waiver of the Agreement that would render it unenforceable. Klotz does not allege waiver in her Complaint. Klotz's actions in filing a

charge of discrimination, which the EEOC investigated and dismissed with a no probable cause finding, did not operate as a waiver. In fact, the Agreement expressly permits Klotz to file discrimination charges but states that she must arbitrate all such claims upon receiving a right-to-sue letter, as is the case here. (Exh. A at 2).

#### IV. CONCLUSION

The Agreement contains a valid and enforceable arbitration provision. Klotz's claims are clearly subject to that Agreement. She voluntarily executed the Agreement and now must adhere to this contractual obligation. For the reasons set forth herein, and those that may be stated at a hearing on this matter, CarMax respectfully moves that the Court compel Klotz to arbitrate her claims against CarMax and stay such claims pending arbitration in accordance with the Agreement.

CARMAX, INC.

By: 

One of its attorneys

John J. Michels, Jr., Esq.  
Mark J. Sheppard, Esq.  
McGuireWoods LLP  
77 W. Wacker Dr. Suite 4400  
Chicago, IL 60601  
Counsel for Defendant, CarMax, Inc.

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# EMPLOYMENT APPLICATION

(Confidential)

CARMAX, A CIRCUIT CITY COMPANY, IS AN EQUAL OPPORTUNITY EMPLOYER BY BOTH POLICY AND PRACTICE AND COMPLIES WITH ALL FEDERAL AND STATE LAWS WHICH FORBID DISCRIMINATION.

IT IS UNLAWFUL IN MARYLAND AND MASSACHUSETTS TO REQUIRE OR ADMINISTER A LIE DETECTOR TEST AS A CONDITION OF EMPLOYMENT OR CONTINUED EMPLOYMENT. AN EMPLOYER WHO VIOLATES THIS LAW SHALL BE SUBJECT TO CRIMINAL PENALTIES AND CIVIL LIABILITY.

Social Security Number		Location #	
396-52-9773		7122	
First Name		Last Name	
L Y D I A		K I O T Z	
Number & Street Address			
2939 Gypsom Ln. LC4			
City		State Zip Code	
W A S H I N G T O N		DC 20004	
Home Phone		Work Phone	
(202) 922-3298		(800) 413-2772	

Thank you for considering CarMax, a Circuit City Company as an employer. To ensure that we make a hiring decision that is right for us and you, we use a number of different selection tools and consider a great amount of information before a decision is made. As you go through the employee selection process, you may come in contact with some or all of the following selection tools.

- Employment Application** - Complete all sections which pertain to you. Do not include a resume as a substitute for completing the application. Sign and date the application. The employment application allows CarMax to determine your qualifications and experience. By signing the application, you authorize CarMax to verify the information contained in the application. Falsification of information on the application or failure to provide accurate information can result in disqualification for employment or termination of employment if discovered after hire.
- Dispute Resolution Agreement** - This agreement requires you and CarMax to arbitrate certain legal disputes related to your application for employment or employment with CarMax. CarMax will consider your application only if this agreement is signed.
- Employment Interviews** - Several personal (or telephone) interviews may be conducted with you in order to provide more detailed information regarding your background and qualifications.
- Employment Eligibility Verification** - This form is required by the U.S. Department of Justice and the Immigration and Naturalization Service. It is used to verify your identity and right to work in the United States.
- Employment Testing** - Various tests may be administered to measure your aptitude and abilities in job related areas. While most tests are short, some administered to management level candidates may take several hours.
- Drug and Illegal Substance Testing** - This is a urinalysis test for the presence of drugs and illegal substances.
- Reference Checks** - Former employers and educational references are verified prior to an offer of employment.
- Records Checks** - Verification and information checks are performed with the Social Security Administration, criminal courts, state and county repositories of criminal records, Department of Motor Vehicles, and credit bureaus.
- Physical Examination** - Some positions in the Company require the applicant to take a physical examination.
- Loss Prevention Process** - You will be asked questions concerning your employment application, any current and past involvement with illegal drugs, any prior felony convictions, and adverse information from prior employers, and other related matters.

16859

**APPLICANT'S SSN & STORE LOCATION ID  
TO BE COMPLETED BY THE APPLICANT**

Social Security Number

3816 - 52 - 9771

Location #

7122

If you wish to be considered for employment you must read and sign the following agreement. You will be considered as an applicant when you have signed the Agreement. Included with this application is the CarMax Dispute Resolution Rules and Procedures. You should familiarize yourself with these rules and procedures prior to signing the Agreement. If the Rules and Procedures are not included in this booklet you must request a copy from a CarMax representative prior to signing the Agreement. You will note that if you sign at this time you do have three (3) days to withdraw your consent. You may, of course, take the package with you and return with it signed, if you wish to continue your application process.

### CARMAX DISPUTE RESOLUTION AGREEMENT

I recognize that differences possibly may arise between CarMax, a Circuit City Company, and me during my application of employment with CarMax (Circuit City Stores, Inc. includes affiliate companies such as CarMax, Patapsco Designs and FNANB). I recognize that it is in the interest of both CarMax and me that disputes be resolved in a manner that is fair, private, expeditious, economical, final and less burdensome or adversarial than court litigation. CarMax has an effective Open Door Policy, and I will try to take advantage of it where feasible. I understand, however, that not all issues can be resolved using the Open Door Policy.

Except as set forth below, both CarMax and I agree to settle any and all previously unasserted claims, disputes or controversies arising out of or relating to my application or candidacy for employment, employment and/or cessation of employment with CarMax, exclusively by final and binding arbitration before a neutral Arbitrator. By way of example only such claims include claims under federal, state and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Medical Leave Act, the law of contract and law of tort.

I understand that if I do file a lawsuit regarding a dispute arising out of or relating to my application or candidacy for employment, employment or cessation of employment, CarMax may use this Agreement in support of its request to the court to dismiss the lawsuit and require me instead to use arbitration.

I understand that I still may exercise my rights under the National Labor Relations Act and file charges with the National Labor Relations Board. I further understand that I still may file administrative charges with the Equal Employment Opportunity Commission or similar federal, state or local agency, but that upon receipt of a right-to-sue letter or similar administrative determination, I shall arbitrate any claim that I may have against CarMax.

I understand that I must file a claim for arbitration within one (1) year of the day on which I know or, through reasonable diligence, should have known of the facts giving rise to my claim. I further agree that if I commence an arbitration, it will be conducted in accordance with the "CarMax Dispute Resolution Rules and Procedures".

I understand that neither this Agreement nor the Dispute Resolution Rules and Procedures form a contract of employment between CarMax and me. I further understand that my signature to this Agreement in no way guarantees that CarMax will offer me employment. If CarMax does offer me employment and I become employed at CarMax, this Agreement in no way alters the "at-will" status of my employment. I understand that my employment, compensation and terms and conditions of employment can be altered or terminated, with or without cause, and with or without notice, at any time, at the option of either CarMax or myself. I understand that no store manager or representative of CarMax, other than an Officer of CarMax at the level of Vice President or above, has any authority to enter into any agreement for employment for any specific duration, to make any agreement contrary to the foregoing or to alter the CarMax Dispute Resolution Rules and Procedures.

  
Applicant's Initials

**APPLICANT'S SSN & STORE LOCATION ID  
TO BE COMPLETED BY THE APPLICANT**

Social Security Number

544-52-9775

Location #

7122

The Dispute Resolution Agreement and the Dispute Resolution Rules and Procedures affect your legal rights. By signing this Agreement, you acknowledge receipt of the Dispute Resolution Rules and Procedures. You may wish to seek legal advice before signing this Dispute Resolution Agreement.

I have read this Agreement and understand that I should read the Dispute Resolution Rules and Procedures over the next few days.

I understand that I may withdraw my consent to this Agreement within three (3) days from the date on which I sign below by notifying the Applicant Screening Department in writing (including my Social Security Number and the address of the place at which I applied for employment) that I am withdrawing my application for employment at CarMax. The address for the Applicant Screening Department is:

Circuit City Stores, Inc.  
Applicant Screening Department  
9954 Mayland Drive  
Richmond, VA 23233

I understand that by so notifying the Applicant Screening Department, I will not be bound to this Agreement and that I no longer will be eligible for employment at CarMax. I recognize that if I sign the Agreement and do not withdraw within three days of signing I will be required to arbitrate, as explained above, employment-related claims which I may have against CarMax, whether or not I become employed by CarMax.

This Agreement will be enforceable throughout the application process, my employment, and thereafter with respect to any such claims arising from or relating to my application or candidacy for employment, employment or cessation of employment with CarMax. We then must arbitrate all such employment-related claims, and we may not file a lawsuit in court.

**AGREED:**

[Signature]  
Signature

1/25/02  
Date

34452 9775  
Social Security Number

[Signature of Parent or Guardian (if under 18 years of age)]		Date
--	--	------

CarMax, a Circuit City Company, agrees to consider this Employment Application and to follow this Dispute Resolution Agreement and the Dispute Resolution Rules and Procedures in connection with the Associate whose signature appears above.

[Signature]  
Jeffrey S. Wells  
Senior Vice President, Human Resources  
Circuit City Stores, Inc.



APPLICANT'S SSN & STORE LOCATION ID  
TO BE COMPLETED BY THE APPLICANT

Social Security Number

346 - 52 - 9775

Location #

7122

**STOP!**

**IF YOU HAVE NOT SIGNED THE AGREEMENT...**

If you have decided not to agree to the terms of the preceding DISPUTE RESOLUTION AGREEMENT then you do not need to complete the balance of this application. We appreciate your interest in the company.

**IF YOU HAVE SIGNED THE AGREEMENT...**

If you have decided at this time to agree to the terms of the preceding DISPUTE RESOLUTION AGREEMENT then you will need to complete the balance of this application so that we can continue with your application process.

**EDUCATION AND TRAINING**

CIRCLE LAST YEAR OF EDUCATION COMPLETED

GRADE SCHOOL 9 10 11 12 13 14 15 16 17 18 19 20

HIGH SCHOOL ATTENDED

West Orange

DIPLOMA/G.E.D. RECEIVED ?

yes ☒ no ☐

BUSINESS SCHOOL, TRADE SCHOOL, COLLEGE OR UNIVERSITY ATTENDED	COURSE OF STUDY (MAJOR AREA OF STUDY)	YEARS ATTENDED	DEGREE RECEIVED	GRADE AVERAGE
NAME: Robert Morris CITY & STATE: Ocala, FL	Marketing	FROM 1971 TO 1976		
NAME:		FROM _____ TO _____		
NAME:		FROM _____ TO _____		
NAME:		FROM _____ TO _____		

LIST ANY SPECIAL SKILLS RELEVANT TO THE POSITION FOR WHICH YOU ARE APPLYING, (I.E., COMPUTER SOFTWARE AND/OR EQUIPMENT).

SALES Back ground

LIST ANY HOBBIES, INTERESTS OR ANY OTHER SKILLS OR HONORS WHICH HAVE A DIRECT BEARING ON THE JOB YOU ARE SEEKING. IDENTIFY LANGUAGES, OTHER THAN ENGLISH, YOU CAN SPEAK AND UNDERSTAND. YOU ARE NOT REQUIRED TO LIST ANY INFORMATION WHICH MIGHT REVEAL YOUR RACE, RELIGION, SEX OR NATURAL ORIGIN.



APPLICANT'S SSN & STORE LOCATION ID  
TO BE COMPLETED BY THE APPLICANT

Social Security Number

346-52-9777

Location #

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### EMPLOYMENT HISTORY

LIST ALL JOBS, MILITARY SERVICE, VERIFIABLE VOLUNTEER WORK AND SELF-EMPLOYMENT IN THE USA, BEGINNING WITH PRESENT JOB. INCLUDE ANY PERIODS OF UNEMPLOYMENT GREATER THAN 1 MONTH IN DURATION. PRINT CLEARLY.

YOU MUST COMPLETE THIS SECTION IN ITS ENTIRETY EVEN IF YOU INCLUDE A RESUME.

NAME OF COMPANY, ADDRESS, STATE, TELEPHONE NUMBER	DATES OF EMPLOYMENT MONTH-YEAR	RATE OF PAY	NAME AND PHONE NUMBERS OF SUPERVISOR	DUTIES AND RESPONSIBILITIES	REASON FOR LEAVING
CO NAME <u>Compounds Plus</u> STREET <u>601 Colbrook</u> CITY & STATE <u>Jamboual</u> PHONE <u>947 412 7772</u> JOB TITLE _____	FROM <u>5/01</u> TO <u>Present</u> #HRS/WEEK _____	STARTING <u>13.00</u> ENDING <u>13.50</u> CIRCLE: HR WK MO YR	NAME OF SUPERVISOR <u>Jette Hernandez</u> (AREA) PHONE _____ MAY WE CONTACT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Setting up Reservations ↓	Location ↓
CO NAME <u>Home Depot</u> STREET _____ CITY & STATE <u>Naperville</u> PHONE _____ JOB TITLE <u>2016 Cashier</u>	FROM <u>5/99</u> TO <u>5/2001</u> #HRS/WEEK _____	STARTING <u>13.00</u> ENDING <u>13.70</u> CIRCLE: HR WK MO YR	NAME OF SUPERVISOR _____ (AREA) PHONE _____ MAY WE CONTACT? <input type="checkbox"/> YES <input type="checkbox"/> NO	DO Promotion Availability	Cashier Elect Dept
CO NAME <u>C-1-8 Nap</u> STREET _____ CITY & STATE <u>Naperville</u> PHONE _____ JOB TITLE _____	FROM <u>7/1998</u> TO <u>1999</u> #HRS/WEEK _____	STARTING <u>11.63</u> ENDING <u>12.97</u> CIRCLE: HR WK MO YR	NAME OF SUPERVISOR _____ (AREA) PHONE _____ MAY WE CONTACT? <input type="checkbox"/> YES <input type="checkbox"/> NO	Fall was a slow time	Sec to Const. D-ivision
CO NAME <u>Star Com</u> STREET _____ CITY & STATE _____ PHONE _____ JOB TITLE _____	FROM <u>7/1996</u> TO <u>1998</u> #HRS/WEEK _____	STARTING <u>Commission</u> ENDING _____ CIRCLE: HR WK MO YR	NAME OF SUPERVISOR <u>Steve Carr</u> (AREA) PHONE _____ MAY WE CONTACT? <input type="checkbox"/> YES <input type="checkbox"/> NO	Divorce on my husband side	Selling Custom Homes
CO NAME <u>Gladstone</u> STREET _____ CITY & STATE _____ PHONE _____ JOB TITLE _____	FROM <u>3/1994</u> TO <u>5/1997</u> #HRS/WEEK _____	STARTING <u>20.000</u> ENDING <u>+ comm</u> CIRCLE: HR WK MO YR	NAME OF SUPERVISOR _____ (AREA) PHONE _____ MAY WE CONTACT? <input type="checkbox"/> YES <input type="checkbox"/> NO	Better opportunities	Selling Custom Homes

HAVE YOU EVER WORKED FOR CARMAX, CIRCUIT CITY OR ANY OF ITS SUBSIDIARIES? ☐ YES ☒ NO  
IF YES, WHERE \_\_\_\_\_ FROM \_\_\_\_\_ TO \_\_\_\_\_

HAVE YOU, WITHIN THE LAST TWELVE MONTHS, APPLIED FOR A POSITION WITH CARMAX, CIRCUIT CITY OR ANY OF ITS SUBSIDIARIES? ☐ YES ☒ NO  
IF YES, WHERE \_\_\_\_\_  
APPROXIMATE DATE \_\_\_\_\_

DO YOU HAVE ANY FRIENDS OR RELATIVES EMPLOYED BY CARMAX? ☐ YES ☒ NO  
IF YES, PLEASE IDENTIFY \_\_\_\_\_



**APPLICANT'S SSN & STORE LOCATION ID  
TO BE COMPLETED BY THE APPLICANT**

Social Security Number

346 - 52 - 9765

Location #

7122

HOW DID YOU HEAR ABOUT US?

☐ EMPLOYMENT ADNEWSPAPER 100 Sun

RADIO \_\_\_\_\_

TV \_\_\_\_\_

INTERNET \_\_\_\_\_

OTHER PUBLICATION \_\_\_\_\_

☐ JOB FAIR☐ RECRUITER CONTACTED ME☐ COLLEGE RECRUITING☐ EMPLOYMENT AGENCY☒ ASSOCIATE REFERRAL JASMINE SHIELDS☐ OTHER \_\_\_\_\_ARE YOU ELIGIBLE TO WORK IN THE USA? ☒ YES ☐ NOARE YOU UNDER 18 YEARS OF AGE? ☐ YES ☒ NOIF YES, DO YOU HAVE A WORK PERMIT? ☐ YES ☒ NOHAVE YOU, SINCE THE AGE OF 18 BEEN CONVICTED OF A FELONY? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN. \_\_\_\_\_

A CONVICTION WILL NOT NECESSARILY EXCLUDE YOU FROM EMPLOYMENT. EACH CONVICTION WILL BE JUDGED ON ITS OWN MERITS WITH RESPECT TO THE TIME, CIRCUMSTANCES AND SERIOUSNESS.

SPECIFIC TITLE OF

POSITION APPLIED FOR: Sales

TYPE OF

WORK DESIRED:

☒ FULL TIME ☐ REGULAR☐ PART TIME ☐ SEASONAL

DATE AVAILABLE

TO BEGIN WORK: 2/02

SALARY/WAGE

EXPECTED: \$14.00PER YEAR \$14.00

PER HR.

LIST HOURS AND DAYS YOU  
ARE AVAILABLE TO WORK

Flexible

	SUN	MON	TUE	WED	THU	FRI	SAT
FROM		8-5	8-5	8-5	8-5	8-5	8-5
TO							

**PLEASE READ CAREFULLY AND SIGN BELOW**

I hereby certify that all of the information contained in this application is complete and accurate to the best of my knowledge. I understand that, if employed, omissions or false or inaccurate statements on this application or the loss prevention interview may result in dismissal.

I hereby authorize all prior employers, schools, credit bureaus, Social Security Administration, law enforcement agencies and investigative agencies to give CarMax any and all information concerning my previous employment and any pertinent information they may have, personal or otherwise, concerning my qualifications for the position applied for. I release all persons or entities from all liability for any damage that may result from furnishing information to CarMax. I also release CarMax and all of its employees from all liability for any damage that may result from reliance on the information furnished. I understand that if a consumer investigation report is requested, I have the right under the Fair Credit Reporting Act to request in writing, within a reasonable time, a complete and accurate disclosure of the nature and scope of the investigation. This written request should be addressed to the location where this application is filed.

If employed by CarMax, I agree to abide by its policies, rules and regulations. I understand and agree that my employment is at will and, therefore, my employment and compensation can terminate, with or without cause, at any time, at my option or the option of Circuit City Stores, Inc. or any of its affiliated companies, unless it is modified by a specific written employment contract for a special duration which is signed by an officer of CarMax at the level of Vice President or above and me. This at-will employment relationship may not be modified by any oral or implied agreement.

I understand that this application is completed for the position or positions indicated on page 8 and that it will be necessary to reapply for other positions when they come available. I also understand that this application is good for only sixty (60) days from today's date. If I still desire to be considered for a position with the company after this application expires, it will be my responsibility to complete a new application and file it with the company.

MARYLAND APPLICANTS ONLY: I acknowledge that I have received notification that UNDER MARYLAND LAW, AN EMPLOYER MAY NOT REQUIRE OR DEMAND, AS A CONDITION OF EMPLOYMENT, PROSPECTIVE EMPLOYMENT, OR CONTINUED EMPLOYMENT, THAT AN INDIVIDUAL SUBMIT TO OR TAKE A LIE DETECTOR OR SIMILAR TEST. AN EMPLOYER WHO VIOLATES THIS LAW IS GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE NOT EXCEEDING \$100.

Jasmine Shields  
SIGNATURE OF APPLICANT

1/25/02  
DATE SIGNED

APPLICANT'S SSN & STORE LOCATION ID  
TO BE COMPLETED BY THE APPLICANT

Social Security Number

3 4 6 - 5 2 - 9 7 7 5

Location #

7 1 2 2

## Consumer Credit Report Disclosure\*

I authorize CarMax the Auto Superstore, a Circuit City Company, to obtain consumer credit reports which may be used for employment purposes.

Julia Klotz      1/25/02

SIGNATURE

DATE

\*To be retained with Employment Application

## **DISPUTE RESOLUTION RULES AND PROCEDURES**

## **CARMAX DISPUTE RESOLUTION RULES AND PROCEDURES**

### **Rule 1 PURPOSE**

CarMax has established an employment dispute resolution procedure, culminating in formal arbitration, designed to provide a fair, private, exclusive, expeditious, final, and binding means for resolving legal disputes rising out of, or relating to, employment with CarMax, without the need for litigation in federal, state or local courts. These Dispute Resolution Rules and Procedures govern arbitrations held pursuant to the CarMax Dispute Resolution Agreement, whether brought by an Associate or by CarMax. The term "Associate" includes applicants, employees and former employees. These Dispute Resolution Rules and Procedures are written to guide an Associate through the arbitration process; however, they apply with full force and effect to both Associates and CarMax.

### **Rule 2 CLAIMS SUBJECT TO ARBITRATION**

Except as otherwise limited herein, any and all employment-related legal disputes, controversies or claims arising out of, or relating to, an Associate's application or candidacy for employment, employment or cessation of employment with CarMax or one of its affiliates shall be settled exclusively by final and binding arbitration before a neutral, third-party Arbitrator selected in accordance with these Dispute Resolution Rules and Procedures. Arbitration shall apply to any and all such disputes, controversies, or claims whether asserted against the Company and/or against any employee, officer, alleged agent, director or affiliate company.

All previously unasserted claims arising under federal, state or local statutory or common law shall be subject to arbitration. Merely by way of example, these claims include, but are not limited to, claims arising under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), 42 U.S.C. § 1981, as amended, including the amendments of the Civil Rights Act of 1991, the Employee Polygraph Protection Act, the Employee Retirement Income Security Act (ERISA), state discrimination statutes, state statutes and/or common law regulating employment termination, the law of contract or the law of tort; including, but not limited to, claims for malicious prosecution, wrongful discharge, wrongful arrest/wrongful imprisonment, and intentional/negligent infliction of emotional distress or defamation.

Claims by Associates for state employment insurance (e.g., unemployment compensation, workers' compensation, worker disability compensation) or under the National Labor Relations Act shall not be subject to arbitration. Statutory or common law claims alleging that CarMax retaliated or discriminated against an Associate for filing state employment insurance claim, however, shall be subject to arbitration.

### **Rule 3 DISMISSAL/STAY OF COURT PROCEEDINGS**

By agreeing to the Dispute Resolution Program, an Associate agrees to resolve through arbitration all claims described in or contemplated by Rule 2. If an Associate files a lawsuit in court to resolve claims subject to arbitration, the Associate agrees that the Court shall dismiss the lawsuit and require the Associate to arbitrate the dispute.

If an Associate files a lawsuit in Court involving claims which are, and other claims which are not, subject to arbitration, the Associate agrees that the court shall stay litigation of the nonarbitrable claims and require that arbitration take place with respect to those claims subject to arbitration. The Associate further agrees that the Arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any later court lawsuit on any nonarbitrable claims.

#### **Rule 4 COMMENCEMENT OF ARBITRATION**

##### **a. PROCEDURE**

An Associate shall commence an arbitration by filing the attached CarMax Arbitration Request Form with a required filing fee of \$75 (made payable with a cashier's check or money order to CarMax) to:

Arbitration Coordinator  
CarMax Auto Superstores, Inc.  
4900 Cox Road  
Glen Allen, VA 23060

The required fee may be waived based on demonstrated inability to pay. An Associate may obtain a Request for Waiver of Filing Fee from the Arbitration Coordinator at the address above or by calling (804) 747-0422, ext. 4480.

Any Arbitration Request Form which is not accompanied by either the required filing fee or a Request for Waiver of Filing Fee will not be accepted and will be returned to the Associate.

##### **b. TIME LIMITS**

###### **i. FILING OF REQUEST FOR ARBITRATION**

The "CarMax Arbitration Request Form" shall be submitted not later than one year after the date on which the Associate knew, or through reasonable diligence should have known, of the facts giving rise to the Associate's claim(s). The failure of an Associate to initiate an arbitration within the one-year time limit shall constitute a waiver with respect to that dispute relative to that Associate.

###### **ii. CARMAX'S RESPONSE**

Within twenty-one (21) calendar days of receipt of an Associate's Arbitration Request Form and either the accompanying filing fee or Request for Waiver of Filing Fee, the Company shall send the Company's Response to the Associate via first-class mail, postage prepaid, or hand delivery.

##### **c. NOTICE/OTHER FILINGS**

All other communications, notices or filings, including discovery requests and responses, shall be in writing, and shall be deemed to have been given if (i) delivered by hand to a person of suitable age and discretion; or (ii) mailed first class mail, postage prepaid, as follows:

If to CarMax:

- (i) Arbitration Coordinator  
CarMax Auto Superstores, Inc.  
4900 Cox Road  
Glen Allen, VA 23060; or
- (ii) to the Company's attorney as designated in writing by the Company.

If to the Associate:

- (i) to the Associate's address of record as it appears on the Arbitration Request Form; or
- (ii) to the Associate's attorney as designated in the Arbitration Request Form or later designated in writing by the Associate.

#### **Rule 5 SELECTION OF AN ARBITRATOR**

CarMax and the Associate shall participate equally in the selection of an Arbitrator to decide the arbitration. Within twenty-one (21) calendar days after the Company receives the Associate's Arbitration Request Form and the accompanying filing fee, National Arbitration and Mediation (NAM) or other Arbitrator and/or Arbitration Service as agreed to by the Parties shall be asked to provide a panel of seven (7) neutral arbitrators



with experience deciding employment disputes. The Company and the Associate then shall have the opportunity to review the background of the arbitrators by examining the materials provided by the Arbitration Service. Within seven (7) calendar days after the panel composition is received, the Associate and the Company each shall inform the Arbitration Service which arbitrators the Parties find unacceptable for deciding the dispute. The Arbitration Service then will appoint an Arbitrator from among the named individuals the Parties found acceptable. If all arbitrators on the first panel furnished by the Arbitration Service are stricken by the Parties as unacceptable for deciding the dispute, the Arbitration Service is authorized to furnish an additional panel, from which each party may strike up to three (3) arbitrators. The Arbitration Service will then appoint an arbitrator from the remaining names.

#### **Rule 6 TIME AND PLACE OF ARBITRATION**

The arbitration hearing shall be held at the offices of, or a location selected by, the Arbitration Service in the city nearest the location where the Associate was or sought to be employed with the company, unless the Parties agree otherwise. If the Arbitration Service does not select an arbitration location within fifty (50) miles of the city of the Associate's last employment with the Company, the Associate and the Company shall designate a mutually amenable location at which to hold the arbitration.

The Parties and the Arbitrator shall make every effort to see that the arbitration is completed, and an award rendered, as soon as possible. There shall be no extensions of time or delays of an arbitration hearing except in cases where both Parties consent to the extension or delay, or where the Arbitrator finds such a delay or extension necessary to resolve a discovery dispute or other matter relevant to the arbitration.

#### **Rule 7 REPRESENTATION**

Both the Associate and the Company shall have the right to be represented by counsel.

#### **Rule 8 DISCOVERY**

##### **a. INITIAL DISCLOSURE**

Within fourteen (14) calendar days following the appointment of an Arbitrator, the Parties shall provide each other with copies of all documents (except for privileged documents that are protected from disclosure because they involve attorney-client, doctor-patient or other legally privileged or protected communications or materials) upon which they rely in support of their claims or defenses. Throughout the discovery phase, each Party shall provide the opposing Party with any and all documents relevant to any claim or defense.

Upon request, the Associate shall be entitled to a copy of all documents (except privileged documents as described above) in the Associate's "PERSONNEL RECORDS FILE."

##### **b. OTHER DISCOVERY**

###### **i. INTERROGATORIES/DOCUMENT REQUESTS**

Each Party may propound one set of twenty (20) interrogatories (including subparts) to the opposing Party. Interrogatories are written questions asked by one Party to the other, who must answer under oath. Such interrogatories may include a request for all documents upon which the responding Party relies in support of its answers to the interrogatories. Answers to interrogatories must be served within twenty-one (21) calendar days of receipt of the interrogatories.

###### **ii. DEPOSITIONS**

A deposition is a statement under oath that is given by one Party in response to specific questions from the other Party, and usually is recorded or transcribed. Each Party shall be entitled to take the deposi

tion of up to three (3) individuals of the Party's choosing. The Party taking the deposition shall be responsible for all costs associated therewith, such as the cost of a court reporter and the cost of a transcript.

### **iii. ADDITIONAL DISCOVERY**

Upon the request of any Party and a showing of substantial need, the Arbitrator may permit additional discovery, but only if the Arbitrator finds that such additional discovery is not overly burdensome, and will not unduly delay conclusion of the arbitration.

### **c. DISCOVERY DISPUTES**

The Arbitrator shall decide all disputes related to discovery. Such decisions shall be final and binding on the Parties. In ruling on discovery disputes, the Arbitrator shall be guided by the discovery rules contained in the Federal Rules of Civil Procedure.

### **d. TIME FOR COMPLETION OF DISCOVERY**

All discovery must be completed within the ninety (90) calendar days after the selection of the Arbitrator, except for good cause shown. In order to expedite the arbitration, the Parties may initiate discovery prior to the appointment of the Arbitrator.

## **Rule 9 HEARING PROCEDURE**

### **a. WITNESSES**

Witnesses shall testify under oath, and the Arbitrator shall afford each Party a sufficient opportunity to examine its own witnesses and cross-examine witnesses of the other Party. Either Party may issue subpoenas compelling the attendance of any other person necessary for the issuing Party to prove its case.

### **i. SUBPOENAS**

A subpoena is a command to an individual to appear at a certain place and time and give testimony. A subpoena also may require that the individual bring documents when he or she gives testimony. The Arbitrator shall have the authority to enforce and/or cancel such subpoenas provided that such subpoenas are issued no less than ten (10) calendar days prior to the commencement of an arbitration hearing or deposition. The Party issuing the subpoena shall be responsible for the fees and expenses associated with the issuance and enforcement of the subpoena, and with the attendance of the subpoenaed witness at the arbitration hearing.

### **ii. SEQUESTRATION**

The Arbitrator shall ensure that all witnesses who will testify at the arbitration are not influenced by the testimony of other witnesses. Accordingly, the Arbitrator may sequester all witnesses who will testify at the arbitration, provided that the Arbitrator shall permit the Associate bringing the arbitration and the Company's designated representative to remain throughout the arbitration, even though they may or may not testify at the hearing.

### **b. EVIDENCE**

The Parties may offer evidence that is relevant and material to the dispute and shall produce any and all non-privileged evidence which the Arbitrator deems necessary to a determination of the dispute. The Arbitrator need not specifically follow the Federal Rules of Evidence, although they may be consulted to resolve questions regarding the admissibility of particular matters.



**c. BURDEN OF PROOF**

An Associate has the burden of proving a claim or claims by a preponderance of the evidence. To prevail, an Associate must prove that the Company's conduct with respect to the Associate was a violation of applicable law.

**d. BRIEFING**

Each Party shall have the opportunity to submit one pre-hearing brief and one post-hearing brief, which is a written statement of facts and law, in support of its position. Briefs shall be typed and shall be limited in length to twenty (20) double-spaced pages.

Pre-hearing briefs may be submitted no later than ten (10) calendar days prior to a scheduled arbitration hearing. Post-hearing briefs may be submitted no later than twenty (20) calendar days after the Parties receive the transcript of the arbitration from the reporting service.

**e. TRANSCRIPTION**

The Parties may arrange for transcription of the arbitration by a certified reporter. The Parties shall share evenly the costs of the reporter and transcription, subject to the provisions of Rule 13 below.

**f. CONSOLIDATION**

**i. CLAIMS**

The Arbitrator shall have the power to hear as many claims as an Associate may have against the Company consistent with Rule 2 of these Dispute Resolution Rules and Procedures. The Arbitrator may hear additional claims that were not mentioned in the Arbitration Request Form, provided the Associate adding claims notifies the Company at least thirty (30) calendar days prior to a scheduled arbitration, the additional claims are timely as of the date on which they are added and the Company is not prejudiced in its defense by such addition.

**ii. PARTIES**

The Arbitrator shall not consolidate claims of different Associates into one proceeding, nor shall the Arbitrator have the power to hear an arbitration as a class action (a class action involves an arbitration or lawsuit where representative members of a large group who claim to share a common interest seek relief on behalf of the group).

**g. CONFIDENTIALITY**

All aspects of an arbitration pursuant to these Dispute Resolution Rules and Procedures, including the hearing and record of the proceeding, shall be confidential and shall not be open to the public, except (i) to the extent both Parties agree otherwise in writing; (ii) as may be appropriate in any subsequent proceeding between the Parties, or (iii) as may otherwise be appropriate in response to a governmental agency or legal process.

All settlement negotiations, mediations, and the results thereof shall be confidential.

**Rule 10 SUBSTANTIVE CHOICE OF LAW**

The Arbitrator shall apply the substantive law of the State in which the Associate is, was or sought to be predominantly employed. For claims arising under federal law, the Arbitrator shall follow the substantive law applicable to the United States District Court for the District in which the Associate is or was predominantly employed.

## **Rule 11 ARBITRATOR AUTHORITY**

The Arbitrator shall conduct the arbitration and shall have the authority to render a decision in accordance with these Dispute Resolution Rules and Procedures, and in a manner designed to promote rapid and fair resolution of disputes. To that end, seven days prior to the scheduled arbitration hearing, the parties shall participate in a telephone conference with the Arbitrator. Where a Party has challenged the legal sufficiency of an asserted claim or defense in a pre-hearing brief, each Party may be heard. A Party making such a challenge should file the pre-hearing brief as early as possible to permit due consideration of the issue. The Arbitrator shall strike any legally deficient claim and/or defense by ruling communicated to the Parties at least five (5) days prior to the scheduled arbitration hearing.

### **a. JURISDICTION**

The Arbitrator's authority shall be limited to deciding the claims and defenses submitted for arbitration. Unless the Associate is subject to a contract providing for the employment of the Associate under specified terms or for a given duration, the Associate's employment remains alterable at the discretion of the Company and/or terminable at any time, at the will of either the Associate or the Company, with or without just cause. Accordingly, the Arbitrator shall have no authority to require that CarMax have "just cause" to discipline or discharge an Associate or to change the terms and conditions of employment of an Associate unless specifically required by federal, state or local law, or as a remedy for a violation of applicable law by the Company with respect to the Associate.

### **b. SANCTIONS**

The Arbitrator shall have the power to award sanctions against a Party for the Party's failure to comply with these Dispute Resolution Rules and Procedures or with an order of the Arbitrator. These sanctions may include assessment of costs, prohibitions of evidence, or, if justified by a Party's wanton or willful disregard of these Dispute Resolution Rules and Procedures, an adverse ruling in the arbitration against the Party who has failed to comply.

## **Rule 12 AWARD**

Within twenty-one (21) calendar days after receipt of post-hearing briefs, if any, the Arbitrator shall mail to the parties a written award specifying appropriate remedies, if any. In the Arbitrator's discretion, the award may include findings of fact and conclusions of law.

The Parties to an arbitration shall be provided with a copy of the Arbitrator's award. Other Associates who have agreed to arbitration may request copies of the arbitration decisions in a given case. In cases where an arbitration decision is provided to an Associate who was not a Party to the particular arbitration, the Party-Associate's name shall be deleted from the arbitration decision unless the Party-Associate agrees otherwise in writing.

## **Rule 13 FEES AND EXPENSES**

### **a. COSTS OTHER THAN ATTORNEY FEES**

#### **i. Definitions**

Costs of an arbitration for which an Associate may be responsible, subject to the other provisions of this Rule, include filing or administrative fees charged by the Arbitration Service, the cost of a reporter who transcribes the proceeding, and expenses of renting a room in which the arbitration is held. Incidental costs include such items as photocopying or the costs of producing witnesses or proof.

**ii. Filing Fee/Costs of Arbitration**

An Associate initiating an arbitration shall pay a filing fee of seventy-five dollars (\$75) made payable with a cashier's check or money order to CarMax Auto Superstores, Inc., unless the filing fee is waived based on demonstrated inability to pay. CarMax shall pay the daily or hourly fees of the Arbitrator who decides the case and shall advance the remainder of the costs of the arbitration. Each Party shall advance its own incidental costs. Subject to the other provisions of this Rule set forth below, each Party shall pay one-half of the costs of arbitration following the issuance of the arbitration award. The Associate's liability for the costs and fees of arbitration, other than attorney fees, however, shall be limited to the higher of five hundred dollars (\$500) or three percent (3%) of the Associate's most recent annual compensation at CarMax.

**iii. Shifting of Costs**

If the Associate prevails in arbitration, whether or not monetary damages or remedies are awarded, the filing fee shall be refunded to the Associate, and the Arbitrator may require that CarMax pay the Associate's share of the costs of arbitration and incidental costs. If CarMax prevails in arbitration, the Arbitrator may require the Associate to pay CarMax's share of the costs of arbitration and incidental costs, subject to the limitation set forth above.

**iv. Payment of Costs**

The Parties shall pay all previously unpaid arbitration costs within ninety (90) calendar days of the issuance of the arbitration award.

If the Associate fails to pay, or fails to make arrangements to pay, within ninety (90) calendar days, and the Associate is still employed by the Company, CarMax may deduct the amount owed from the Associate's paycheck. Such deduction may not exceed a rate of five percent (5%) of the Associate's compensation per pay period.

**b. ATTORNEY FEES**

The Arbitrator is authorized to award attorney fees in accordance with applicable law. In the absence of an award, each Party shall be liable for its own attorney fees. Any award shall be reasonable in light of the amount and complexity of work involved in the arbitration, and in accordance with customary billing rates of attorney in the geographic area in which the arbitration is held.

**Rule 14 REMEDIES AND DAMAGES**

If the Arbitrator finds for the Associate, the Arbitrator, in his discretion, may award appropriate relief in accordance with applicable law. If appropriate relief includes reinstatement, such reinstatement will be to the position of employment the Associate held or, if such reinstatement is impractical, to a comparable position at the location of the Associate's last employment. If reinstatement at the place of the Associate's last employment is not practical, reinstatement will be to a comparable position at CarMax in the same general geographic market area.

**Rule 15 SETTLEMENT**

The Parties may settle their dispute at any time. Prior to closure of the arbitration hearing, the Parties may settle the case without involvement of the Arbitrator. Once the hearing has closed, settlement may take place only with the approval of the Arbitrator.

At any point prior to the Arbitrator's issuance of an award, the Parties may, by agreement, refer their dispute to mediation before a mediator provided by the Arbitration Service.

#### **Rule 16 ENFORCEABILITY**

The Dispute Resolution Agreement and any award rendered pursuant to it shall be enforceable and subject to the Federal Arbitration Act, 9 U.S. § 1, et seq., and the Uniform Arbitration Act of Virginia, §§8.01-581.01 et seq., regardless of the State in which the arbitration is held or the substantive law applied in the arbitration.

#### **Rule 17 APPEAL RIGHTS**

The award rendered by the Arbitrator shall be final and binding as to both the Associate and the Company. Either party may appeal the Arbitrator's decision to a court in accordance with the appeal procedures of the Federal Arbitration Act, 9 U.S.C. § 1 et seq., or the Uniform Arbitration Act of Virginia, §§8.01-581.01 et seq.

#### **Rule 18 SEVERABILITY/CONFLICT WITH LAW**

In the event that any of these Dispute Resolution Rules and Procedures agreed upon by the Parties is held to be in conflict with a mandatory provision of applicable law, the conflicting Rule or Procedure shall be modified automatically to comply with the mandatory provision of applicable law until such point as these Dispute Resolution Rules and Procedures may be modified in accordance with Rule 19 below. In the event of an automatic modification with respect to a particular Rule or Procedure, the remainder of these Rules and Procedures shall not be affected. An automatic modification of one of these Rules or Procedures shall be applicable only in the jurisdiction in which it is in conflict with a mandatory provision of law. In all other jurisdictions, these Dispute Resolution Rules and Procedures shall apply in full force and effect.

#### **Rule 19 TERMINATION OR MODIFICATION OF DISPUTE RESOLUTION AGREEMENT OR DISPUTE RESOLUTION RULES AND PROCEDURES**

CarMax may alter or terminate the Agreement and these Dispute Resolution Rules and Procedures on December 31 of any year upon giving thirty (30) calendar days written notice to Associates, provided that all claims arising before alteration or termination shall be subject to the Agreement and corresponding Dispute Resolution Rules and Procedures in effect at the time the Arbitration Request Form and accompanying filing fee, or Request for Waiver of Filing Fee is received by the Company. Notice may be given by posting a written notice by December 1 of each year at all CarMax locations (including locations of affiliated companies). A copy of the text of any modification to the Agreement or Rules and Procedures will be published in the Applicant Packet, which will be available at such locations after December 31 of each year.